IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 34265 of 2006(D)

AGAINST THE ORDER IN IA 882/06 IA 647/05 IN OS.129/2005 of MUNSIFF COURT, KALPETTA

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PETITIONER: PLAINTIFF

OUSEPH,S/O.DEVASYA,67 YEARS,
MUNDIYANIPURATH HOUSE,SWARGAMKUNNU,MUTTIL AMSOM DESOM,VYTHIRI TALUK,WAYANAD,REP. BY P/A.HOLDER DEVASYA,S/O.ANTONY,43 YEARS,PERUMTHOTTATHIL HOUSE, KEYAPARAMBIL,ULIYAKKAL VILLAGE,THALIPARAMBU TALUK, KANNUR DISTRICT.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: DEFENDANTS
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1. CHACKO, S/O.DEVASYA,
60 YEARS, VAZHAPARAMBIL HOUSE,
KARIMKALLELKOLLI P.O., VAZHAVETTA, MUTTIL AMSOM DESOM, VYTHIRI TALUK, WAYANAD.

2. SUNNY,
S/O.CHACKO, VAZHAPARAMBIL HOUES,
KARIMKALLELKOLLI P.O., VAZHEVTTA,
MUTTIL AMSOM DESOM, VYTHIRI TALUK,
WAYANAD.

3. JAMES,
S/O.CHACKO, VAZHAPARAMBIL HOUSE,
KARIMKALLEKOLLI P.O., VAZHAVETTA,
MUTTIL AMSOM DESOM, VYTHIRI TALUK, WAYANAD.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.34265 OF 2006

Dated 21st December 2006

JUDGMENT

Petitioner is plaintiff in O.S.129/05 on the file of Munsiff court, Kalpetta. Suit is one for permanent prohibitory injunction. A Commissioner was appointed at the instance of the petitioner. Commissioner submitted a report. No objection was filed for 15 months. Thereafter I.A.882/06 was filed to remit the report back to the commissioner to file a further report with the assistance of a surveyor. That petition was dismissed under Ext.P4 order. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner was heard.

3. Learned counsel appearing for petitioner vehemently argued that reason for the delay in filing the application to remit the report was explained by petitioner before the trial court. But under Ext.P4 order petition was dismissed on the ground of delay.

Therefore order is to be quashed. Suit is only for prohibitory injunction and not for fixation of boundary. In such circumstances, I do not find any reason to interfere with Ext.P4 order in exercise of the extra ordinary jurisdiction of this court under Article 227 of constitution of India.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.